



Export Insurance

General Insurance Terms (EI-2024-01)

The one-stop shop for exporters

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INTRODUCTION

This version is a free translation of the French version. Only the French version prevails and is legally binding.

The Office du Ducroire (hereafter referred to as “ODL”) is a public institution established in 1961 and governed by the law of the 04th of December 2019 relating to the Office du Ducroire Luxembourg, with its head office located at 65, rue d’Eich L-1461 Luxembourg and registered in the Luxembourg Trade and Companies Register under the number J66.

ODL is not an insurance company according to the amended law of the 07th of December 2015 on the insurance sector and is thus not subject to the supervision of the Insurance Commission.

The General Insurance Terms govern the relationship between ODL and its insured, hereafter referred to as, the Insured. When certain provisions mention an exporter and a bank in the same context, ODL replaces the term, the Insured, with the term the Exporter or the Bank, to avoid any confusion.

The Exporter and the Bank, which are insured under the same Policy, are not regarded as jointly and severally liable to ODL. Consequently, the Exporter’s failure to fulfill their obligations under the Policy do not make the Bank liable and vice versa.

The General Insurance Terms, together with the Special Terms and all related amendments establish the insurance Policy (the Policy). By concluding the Policy, ODL commits to cover the insured. In case of a discrepancy between the General Insurance Terms and the Special Terms, the Special Terms prevail over the General Insurance Terms.

The Policy is not subject to the amended law of the 27th of July 1997 concerning insurance contracts.

The Policy is based on the description of the risk and the information provided by the insured particularly through the insurance application.

Submitting an insurance application is subject to **application fees** which are the sole responsibility of the Insured and which remain applicable even if no Policy was issued.

Before the conclusion of the insurance contract, ODL may undertake provisional cover by issuing an **offer of cover**.

The “contract” implies the insured commercial contract and/or the insured financial credit as stated in the Special Terms. When certain provisions mention a commercial contract and a financial credit, ODL replaces the term “contract” with the terms commercial contract or financial credit, to avoid confusion.

The words written in italics and in bold can be found in the glossary.

In these General Insurance Terms, a reference to a defined term written in singular, whilst the definition of the term is written in plural, is to be understood as the same term and as a reference to any of the components of the term defined in plural, and vice versa.

CHAPTER I

INSURANCE SCOPE

ARTICLE 1

Covered causes of loss

The Special Terms stipulate, among the following causes of **loss**, those, which are covered by the Policy as stated in article 3 of the General Insurance Terms:

- 1.1. Political events and **acts of force majeure** : Political events and **acts of force majeure** imply all events occurring abroad, other than those relating to the risk of **debtor** default, which are an act of **force majeure** for the Insured or for the **debtor**,
- > all violent acts such as war, civil war, revolutions, insurgencies, civil unrest, acts of sabotage, coup d'état or acts of terrorism carried out by a person or a group of people, acting on behalf of an organisation, a government or in association with a person or a group acting for political, religious, ideological or similar purposes
 - > all acts, decisions or omissions deriving from a public authority, such as the enforcement of an embargo, of economic sanctions or state emergency or confinement measures, which are caused by the conduct of international affairs
 - > economic difficulties such as foreign currency shortage or failure to convert or transfer currency outside the **debtor's** country
 - > natural disasters such as earthquakes, volcanic eruptions or tidal waves
 - > epidemics, pandemics, or any public health crises recognised by the World Health Organisation

1.2. **Debtor** default

Debtor default implies the **debtor's** failure to fulfill their obligations:

- > as a result of their **proven insolvency** or
- > without a legitimate reason accepted by the Insured.

Losses that may be caused by both political events and **acts of force majeure** and by **debtor** default are attributed to the **debtor's** default.

ARTICLE 2

Excluded causes of loss

No **loss** is subject to **compensation** and any indemnity paid by ODL, including late interest as stated in article 12 starting of the date of indemnification, shall be reimbursed to ODL if the **loss** is fully or partially caused by the following failures and if these are causally related to the occurrence of the claim:

- > fault on behalf of the Insured or any person for whom they are responsible (subcontractors, agents, officials and where applicable associates), such as errors made from a technical or financial point of view, in the design, the evaluation and the adherence towards the obligations of the contract as well as its drafting
- > a breach of their obligations under the contract
- > a breach of their obligations under their Policy, such as failure to act at all times with caution and diligence in a way as if they were uninsured
- > the failure to comply with the legislation and regulations in force in the Grand-Duchy of Luxembourg or abroad, with particular regard to the commissions, the licences and formalities required for imports and exports and the transfer and conversion of payments
- > neglectful exposure to the risk of non-transfer of payments or assets in foreign currency, in particular due to the fact that the local cash funds available in the **debtor's** country are out of proportion to the rate or volume of work to be carried out or due to the fact that local costs are financed in euro or by currency transfer, whereas the financing of local costs could have been done in the currency in which the local costs were paid
- > conviction of the insured for illegal or criminal activities in particular relating to regulations governing the fight against corruption, money laundering, financing of terrorism and fraudulent practices
- > accepting exorbitant contractual provisions, which are not conform to international practices and which would exceptionally restrict the insured's rights in the event of a claim.

ARTICLE 3

Covered risks

The Special Terms determine which of the following risks are covered by the Policy :

3.1. Risk of cancellation

3.1.1. Cancellation occurs when :

- > the performance of the contract is interrupted for a period of 6 consecutive months and
- > the contract is definitively terminated before the insured has fulfilled all his contractual obligations

3.1.2. Cancellation must be caused by :

- > political events or **acts of force majeure** or
- > **debtor** default.

3.2. Risk of non payment

3.2.1. The risk of non-payment occurs when the Insured is unable to recover the payment of a **certain, of a fixed amount and due claim** resulting from the contract.

3.2.2. Non-payment must be caused by :

- > political events or **acts of force majeure** or
- > **debtor** default.

3.3. Risk of calling on a **bank guarantee**

3.3.1. For bid bonds relating to a tender, an insurance for the risk of calling on a **bank guarantee** may be granted.

3.3.2. For other bank guarantees, insurance against the risk of calling on a **bank guarantee** may only be granted in addition to the risk of cancellation or non-payment.

3.3.3. The risk of calling on bank guarantees occurs when the bank account of the insured is debited, fully or partially, equal to the amount of the guarantee, because of an illegitimate action carried out by the **debtor** in relation to the contract, or because of political and **acts of force majeure**.

3.4. Detainment of and damage to the **contractor's equipment**

3.4.1. Cover of this risk is granted in addition to the risk of cancellation or non-payment.

3.4.2. Detainment of and damage to the **contractor's equipment** occurs when :

- > the **contractor's equipment** is completely or partially destroyed, damaged or lost
- > it is impossible to remove the **contractor's equipment** from the country where the work is being carried out.

3.4.3. Detainment of or damage to **contractor's equipment** must be caused by political or **acts of force majeure**.

3.5. Cover in foreign currency

3.5.1. In addition to the risk of non-payment, if the contract is drawn up in a foreign currency, cover in foreign currency may be granted.

3.5.2. In case of cover in foreign currency, ODL may decide to compensate the **loss**, caused by a risk of non-payment, either :

- > in the affected foreign currency or
- > in euros, by converting the foreign currency into euro according to the **Reference conversion rate** effective on the date of the expiry of the **claims waiting period**.

3.5.3. For bank guarantees in foreign currencies, foreign currency cover is automatically granted when the insured chooses foreign currency cover for the risk of non-payment.

ARTICLE 4

Excluded risks

4.1. Documentary risk

ODL is not responsible for contractual documentation, particularly those relating to the contract and securities. Thus, the validity and description of the contract provided by the Insured, and any interpretation they may associate with it, is their sole responsibility, even if ODL has obtained communication of the contractual documents or has made certain observations about them.

4.2. Risk of reversal

Regarding the exclusions, ODL does not cover the **loss** resulting from the difference caused by an appreciation of the foreign currency compared to the euro, between the conversion rate established in the forward sales contract and the conversion rate at which currency must be purchased to settle the forward sales contract following the termination of the contract.

ARTICLE 5

Insurance scope and effectiveness

5.1. Risk of cancellation:

5.1.1. The insurance for the risk of cancellation covers the costs actually incurred by the Insured for the normal performance of the contract from its effective date.

5.1.2. The insurance for the risk of cancellation does not cover :

- > the premium paid by the Insured under the Policy
- > the commissions (including bank commissions)
- > taxes
- > financial consequences related to any other contract completed by the Insured to limit their exposure to risks, such as, particularly, a contract covering (hedging) interest rate fluctuations, exchange rates, or commodity prices.

5.1.3. The insurance takes effect on the date of entry into force of the contract. In case this date is unknown, the date of signature of the contract is taken into account.

5.2. Risk of non-payment

5.2.1. The insurance for the risk of non-payment covers the principal amount of the contract and the credit interest on that principal.

5.2.2. The insurance for the non-payment risk does not cover :

- > the late interest that is due and payable under the contract
- > the penalties
- > the commissions (including bank commissions)

> the taxes

5.2.3. The insurance for the risk of non-payment takes effect on the date when the insured has fully completed the performance of their contractual obligations.

However, if the contract states that ordered goods and services may be delivered partially and provided that such partial deliveries are subject to individual invoicing and that the due dates for that price are explicitly determined, the insurance for the risk against non-payment shall take effect in regards to each of such deliveries on the date on which the delivery took place.

5.3. Risk of calling on a **bank guarantee**

5.3.1. The insurance for the risk of calling on **bank guarantee** covers the amount of the guarantee.

5.3.2. The insurance for the risk of calling on **bank guarantee** takes effect on the latter of the guarantee dates :

- > effective date of the **bank guarantee**
- > effective date of the contract.

5.4. Detainment of and damage to the **contractor's equipment**

5.4.1. The Insurance for detainment of and damage to the **contractor's equipment** covers the equipment stated in the Special Terms within the limits of the value of the specific equipment according to the different stages of the performance of the contract.

5.4.2. The insurance for detainment of and damage to the **contractor's equipment** is effective from the date of the shipment of the **contractor's equipment** to the country where the work is to be carried out and extends until the date of return of the **contractor's equipment** to Luxembourg or into any other country agreed in writing with ODL. The insurance expires no later than 6 months after the provisional acceptance of the insured work.

ARTICLE 6

Duration and validity of the Policy

- 6.1. Duration of the Policy
- 6.1.1. The Policy is concluded on the issuing date indicated in the Special Terms.
- 6.1.2. The insured is obliged to request the issuance of a Policy within thirty (30) calendar days from the conclusion of the contract. In the event of a claim, whilst the Policy is pending issuance and the premium has been paid, the **offer of cover** will generate temporary cover subject to the General Terms.
- 6.1.3. If the Policy does not end up being issued, the cover does not apply to any causes of **loss** occurring during the temporary coverage period.
- 6.1.4. The Policy is terminated immediately and automatically if:
- > within thirty (30) calendar days from the issuing date, the Special Terms are not returned and signed by the insurance applicant
 - > the contract has not entered into force within six (6) months of the conclusion of the Policy
 - > any conditions precedent to the entry into force of the Policy have not been lifted within 6 months from that date
 - > the extinction of the covered risks
 - > the Insured ceases to exist.

Similarly, amendments to the Policy cease to be binding for ODL, if within thirty (30) days of their issuance, they are not returned to ODL with the required signatures.

- 6.2. Validity of the Policy
- 6.2.1. The Policy is valid once the Insured has fulfilled their obligations, as stated in Article 15 and in particular to the **Acts, conditions and formalities**, which are stipulated in the legislation or regulations valid from the time when the contract enters into force or within 60 calendar days of this entry into force.

ARTICLE 7

Chronological allocation

- 7.1. All payments made by the **debtor**, except late payment interest, are allocated chronologically to **certain, of a fixed amount and due claims**, whether or not they are insured.

If a **certain, of a fixed amount and due** uninsured claim has the same due date as an insured claim, any payment made by the **debtor** will be allocated proportionally between these claims.

If the principal amount and the credit interest have the same due date, payments will be allocated as a priority to the credit interest.

- 7.2. Notwithstanding article 7.1., payments made by the **debtor** may be chronologically allocated to the insured claims when:
- > there are indications that uninsured claims are deliberately favoured
 - > the insured has not declared, as stated in article 15.2., the transactions to which the uninsured claims refer to.
- 7.3. Late payment interest paid by the **debtor** :
- > are, allocated chronologically to the insured claims if they remain fully or partially unpaid
 - > are then acquired by the party who incurred the late payment.

ARTICLE 8

Transfer of rights under the Policy

The Policy is an *intuitu personae* contract. The rights of the Insured are not to be transferred under the Policy without prior written consent of ODL. This must be documented in an amendment to the Policy.

CHAPTER II

ODL'S POWERS

ARTICLE 9

Measures in case of potential claims

- 9.1. If ODL considers that there is a threat arising from one of the risks, as referred to in article 3, it may impose any measures it deems appropriate to prevent the occurrence of a covered risk, in order to limit the effects or maximise **recoveries** under the Policy, such as, in particular, interrupting or continuing the implementation of the contract, take any legal action against the **debtor**, or enter into any settlement or debt restructuring agreement with the **debtor**.
- 9.2. The consequences of such measures will, where applicable, entitle the Insured to **compensation** in the same way and under the same conditions as stated in the Policy, taking into account that the Insured will continue to bare the uninsured percentage.

ARTICLE 10

Termination of the Policy

- 10.1. ODL may terminate the Policy in the following cases:
- > if the premium remains unpaid as specified in article 17.2
 - > in case of the Insured's insolvency
 - > in case of a breach by the insured of their obligations towards the Policy, being linked to the occurrence of a claim, taking into account, that ODL may instead of terminating the Policy and depending on the nature and seriousness of the breach, (a) authorise the insured to solve the stated breach within 30 calendar days, (b) reducing the cover of the Policy (e.g. by reducing the **percentage of cover** or, (c) increase the premium
 - > in case of the occurrence of an event detrimental to the solvency of the insured, such as an acknowledgement of cessation of payment, petition or writ for

bankruptcy or application for a suspension of payment or composition or arrangement with creditors

- > cessation or transfer of the Insured's business activities
- > any breaches or misrepresentation from the Insured, even without acting in bad faith, which distorts ODL's assessment of risks or of the **Luxembourg interest** in such a way that the latter, would not have issued the Policy under the same terms and conditions. ODL will nevertheless retain the premium, unless the Insured demonstrates that they acted in good faith.
- > in case of a proven breach of the Insured's legal or regulatory obligations.

- 10.2. The termination will be conveyed through registered letter via post. Apart from the cases above, termination will only take effect on expiry of a minimum period of one month from the day following the posting, without, however, affecting the cover of risks that occurred prior to the effective date of termination. If the Policy is terminated for any reason whatsoever, premiums paid in the insurance period after the effective date of termination shall be refunded within thirty (30) days of the effective date of termination. After this period, legal interest for payment start to accrue automatically.

ARTICLE 11

Request for reimbursement of any indemnity paid

ODL may claim reimbursement from the Insured of any indemnity paid, plus interest as per article 12. from date of **compensation**, in the following cases:

- > if, after the indemnity has already been paid, ODL receives information indicating that the Insured was not entitled to the indemnity under the Policy
- > in the event of termination of the Policy due to a serious breach of the Insured's obligations under the Policy, which is linked to the occurrence of a claim.

ARTICLE 12

Default interest due under the Policy

- 12.1. Any amount due under the Policy and not paid within thirty (30) calendar days of its due date shall automatically bear and without formal notice, default interest from the due date until the date of full and effective payment, at the following rate:
- > For payments in euros : at the 3-months Euribor rate plus 1% or, in absence of a Euribor rate, at the reference rate commonly used by leading European banks to grant loans in euros plus 1 %
 - > For payments in any other currency at the applicable 3-months SOFR rate plus 1% or, in the absence of a SOFR rate, at the reference rate commonly used by leading international banks to grant loans in the currency concerned plus 1%.
- 12.2. If the Euribor, SOFR or any other reference rate becomes negative, the default interest rate will be equal to 1% per annum.

ARTICLE 13

Financial credit – Recourse against the exporter

- 13.1. When ODL insures a bank against the risk of non-payment of a financial credit, the exporter, whether or not insured, shall be obliged to reimburse at ODL's first request the indemnity paid by the latter to the bank increased by the interest provided for in article 12 from the date of **compensation**, in the following cases and within the following limits:
- > if the performance of the commercial contract has been interrupted, up to the amount of any credit balance in the exporter's loss account established in accordance with the provisions of Article 22.1.3
 - > if the non-payment of the financial credit, although arbitrary and contrary to the provisions of the financial credit, is due to the fault of the exporter, up to the amount of the exporter's liability to the **debtor**, established by virtue of a court decision.

- 13.2. If the Exporter is not insured under the Policy, the obligation imposed on him in accordance with this article will be subject to a separate unilateral commitment, which will condition the entry into force of the Policy.

ARTICLE 14

Control and audit

Any declaration by the Insured, any claim for **compensation** and any document produced by the insured may at any given time give rise to a control or audit by ODL.

This control or audit is carried out by an ODL representative or by an expert chosen by ODL.

CHAPTER III

RIGHTS AND OBLIGATIONS OF THE INSURED

ARTICLE 15

Obligation to provide information

- 15.1. Obligation to provide information relating to insurance application data, modifications to the contract and **Luxembourg interest**.
- 15.1.1. At the time of application for insurance, the Insured is obliged to declare accurately and completely:
- > all elements subject to the cover, such as facts and circumstances known to them and likely to influence ODL's assessment of the risks of the contract to be insured
 - > the **Luxembourg interest**
 - > all **Acts, conditions and formalities** to be carried out on or after the contract comes into force.

The Insured makes sure to keep ODL informed of the entry into force of the contract and of the implementation of **Acts, conditions and formalities** following the entry into force of the contract.

15.1.2. Throughout the duration of the Policy, the Insured is obliged to declare to ODL, at least within thirty (30) calendar days, any modification related to the contract that could influence the risk, such as a modification in the amount of the premium, delivery or performance deadlines or payment terms.

Any change to the contract must be approved by ODL in advance. If ODL decides to insure a change under the Policy, it will determine to what extent, under what conditions and at what premium rate it may be insured. Any change that ODL agrees to insure must be documented in an amendment to the Policy.

15.1.3. Notwithstanding the above article 15.1.2., the following changes will be approved and automatically insured by ODL, with possible adaption to the Policy, but without adjustment of the premium:

- > increases or decreases in the insurance amount, which combined do not exceed either 125,000 euros or 10% of the amount of the contract as stated in the Policy, provided that they meet the requirements laid out by ODL for cover of this amount, in particular with regard to payment terms and securities
- > extensions or reductions of delivery or execution period, which combined do not exceed six months or extensions or reductions of due dates, which combined do not exceed three months.

15.1.4. Any reduction concerning the **Luxembourg interest** must be declared by the Insured to ODL within thirty (30) calendar days at the latest.

ODL will determine to what extent, under what conditions and at what premium rate such a reduction may be approved. This must be set out in an amendment to the Policy.

15.2. Obligation to provide information on changes in risk

15.2.1. Throughout the duration of the Policy, the Insured must inform ODL of the following :

- > any delay in payment under the contract within sixty (60) days from the end of the month in which the due

date lies, unless the Special Terms state a shorter period

- > without delay, of all the facts and circumstances known to him which are likely to degrade the financial situation of the debtor or to constitute a threat of loss
- > without delay, any worsening in its own financial situation, any event which undermines its solvency such as acknowledgement of cessation of payment, petition or writ for bankruptcy or application for a suspension of payment or composition or arrangement with creditors
- > without delay, the cessation or transfer of the Insured's business.

15.2.2. Additionally, the Insured declares :

- > any security or guarantee obtained from third parties in connection with the contract
- > if the Insured is an exporter, all its claims against the **debtor** and all collaterals or guarantees granted by the **debtor** which are not related to the contract
- > if the Insured is a bank:
 - any use of the insured credit within thirty (30) calendar days at the latest
 - any financing not subject to ODL insurance granted in addition to the **debtor** to enable them to pay uninsured debts due to the contract
 - any significant measures they plan to take in addition to the parallel financing.

15.3. Obligation to provide information on **over-financing**

15.3.1. The bank and the exporter, each within their powers, shall immediately inform ODL of any **over-financing** that occurs or is likely to occur.

15.3.2. ODL reserves the right to take measures it deems appropriate, including requesting collaterals or guarantees to make the recourse as stated in article 13 effective.

15.4. Obligation to disclose information relating to corruption, money laundering and the

financing of terrorism and fraudulent activities.

15.4.1. The Insured is obliged to declare to ODL without delay any alleged violation based on credible evidence, in particular in case of an initiation of legal proceedings against the Insured or any equivalent measures in the applicable regulations to combat corruption, money laundering, the financing of terrorism or fraudulent practices.

15.4.2. If this breach is related to the contract, ODL will automatically suspend its obligations towards the Insured.

15.5. Obligation to provide information relating to any other insurance

The Insured shall inform ODL immediately of the existence of any other insurance policy covering a **loss**.

If the Insured has taken on an insurance policy, no **compensation** will be due under the Policy for the mentioned **loss** if it is insured under this other insurance policy. However, if the latter only partially insures the **loss**, ODL will apply a rule of proportionality.

regardless of ODL's right to take legal action to enforce the Policy, ODL has the right to suspend cover after thirty (30) days following the dispatch of a registered letter to the Insured's latest known address. Thus, without prejudice to article 10.1, point 1, no **loss** occurring during a period during which a premium due and payable remains unpaid will thus be covered.

17.3. The premium is indivisible and remains acquired by ODL.

The only cases of reimbursement are the following :

- > cancellation of the Policy in absence of any deceit, fraud or bad faith on the part of the Insured
- > reduction, in the absence of any claim, of the amounts covered or the duration of the risk resulting from a contractual amendment immediately recorded and notified to ODL at the time of the amendment.

There is no premium adjustment if the latter is below €100.

ARTICLE 16

Risk management

16.1. The Insured must manage the risk with due diligence, with as much prudence and responsibility as if they were not insured.

16.2. In the event of a threat of claim, the Insured shall at all times comply with the measures referred to in article 9.1, which ODL considers appropriate and shall authorise ODL to implement the measures.

16.3. The Insured must refrain from any action or measure likely to interfere with ODL's rights.

ARTICLE 17

Payment of the premium

17.1. The conclusion of the Policy makes the Insured liable for the premium, according to the amount and terms of payment as stated in the Special Terms or in the invoice sent to the Insured.

17.2. If all or only part of the premium is not paid within ten days of the due date, and

ARTICLE 18

Risk-retention

The Insured retains sole responsibility for the uninsured portion, i.e. the percentage not covered under the Policy.

However, in case of a financial credit, the bank may carry forward a maximum of 5% of the principal and interest to the exporter, to the extent that it will always retain 2% of the principal and interest on its own account.

ARTICLE 19

Suspension of the Policy

ODL has the right to suspend the Policy if it is aware, suspects or has reasonable grounds to suspect that money laundering, an associated underlying offence, terrorist financing or a breach of international financial restrictive measures are taking place, took place or were attempted by the Insured, in particular because of their person, their development, the origin of the assets, the nature, the purpose or the terms of the concerned transaction

ARTICLE 20

Subcontracting

The Insured who makes use of subcontractors is obliged to negotiate clauses in its subcontracts that allow them, as soon as the contract is threatened with termination, to limit the amounts to be paid to its subcontractors.

CHAPTER IV

COMPENSATION AND RECOVERY

ARTICLE 21

General principles

- 21.1. ODL will compensate the Insured for any **loss** in accordance to this Article and subject to compliance with all other terms under the Policy.
- 21.2. Any decision by ODL regarding the Insured's entitlement to **compensation** is subject to:
- > receipt of a written request from the Insured,
 - > the immediate submission of all information and documents reasonably deemed necessary by ODL to prove the right to **compensation**. In addition, the Insured must promptly respond to requests in order to determine the circumstances and the extent of the **loss**; and

- > the establishment of a loss account by type of risk according to Article 22.1.3

ODL will decide on the Insured's right to **compensation** within thirty (30) calendar days of receiving all the information listed above.

- 21.3. Any indemnity paid by ODL will be up to the **percentage of cover**.
- 21.4. Unless otherwise stated, the loss account is drawn up in euros and ODL will indemnify the Insured in euros.
- 21.5. Unless the **loss** resulting from a risk of cancellation caused exclusively by political events or **acts of force majeure**, ODL may suspend the Insured's right to **compensation** if the **loss** for which the Insured is claiming **compensation** corresponds to the rights which are disputed or if the **debtor** claims to be entitled to perform any set-off of any sort. This right to **compensation** must remain suspended until such dispute or such set-off has been resolved by decision of the judge of the contract which is no longer subject to appeal, having understood that :
- > If the **loss** is due to a risk of cancellation, the decision of the judge of the contract will have to conclude that the cancellation is the consequence of the **debtor's** fault and that any **compensation** invoked is not justified on the behalf of the **debtor**; in this case, the **compensation** from ODL will be calculated in accordance with article 22.1.3.
 - > If the **loss** is due to a risk of non-payment, ODL will compensate the insured's claim against the **debtor** recognised by the decision of the judge of the contract, offset against any claim the **debtor** may have against the insured, this net claim by the insured will in all cases be capped at the balance of the loss account established in accordance with article 22.1.3.

If a decision of the judge of the contract has been obtained by default, ODL may require that this decision ought to be enforced in the **debtor's** country before granting the claim for **compensation**.

21.6. The indemnity paid by ODL to the Insured may not become a source of enrichment for the latter beyond the benefit it derives from the partial performance of the contract. ODL may therefore establish different loss accounts and offset their respective balances.

ARTICLE 22

Calculation of the compensation

22.1. Risk of cancellation

22.1.1. The **compensation** for a **loss** due to the occurrence of a risk of cancellation corresponds to the product of the **percentage of cover** and the debit balance of the loss account.

22.1.2. The loss account will be drawn up in euros.

If amounts that are to be recorded in the loss account are denominated in a foreign currency, they will be converted into euros at the **reference conversion rate** in force on the day on which they were incurred or received.

22.1.3. The balance of the loss account is drawn up as follows :

Debited:

- > The amount of the costs incurred as referred to in articles 5.1.1. unless these costs relate to a claim covered by insurance against the risk of non-payment in accordance with article 3.2.
- > The amount of costs incurred regarding the subcontractors for what they have not yet delivered at the time of the occurrence of the risk of cancellation. This amount shall be limited to the expenses actually incurred by the subcontractors if the Insured has not managed to comply with the obligation towards it as stated in article 20.

Credited:

- > Any amount collected by the Insured in relation to the contract unless this amount corresponds to a payment by the **debtor** or to the

compensation by ODL of a debt covered under the insurance for the risk of non-payment in accordance with article 3.2.

- > Any amount received as a result of the enforcement of collaterals or the resale of recovered, manufactured or sourced goods.
- > any **compensation** other than that paid by ODL under the Policy, received or to be received in respect of costs debited to the loss account.
- > The value of any benefit that the cancellation of the contract has provided to the Insured.

22.1.4. The debit of the loss account will be capped at the amount of the contract less the following amounts :

- > The costs that would still have to be incurred to complete its normal performance
- > The principal amount of any debt relating to a partial delivery or service provided under the contract – whether or not it is paid by the **debtor** or compensated by ODL and covered by insurance against the risk of non-payment in accordance with article 3.2.

If the amount of the contract or the amount of the costs that would still have to be incurred to complete its normal performance are denominated in a foreign currency, they will be converted as follows :

- > If the Insured does not have foreign currency cover : on the basis of the lowest of the following rates : the **maximum conversion rate** as defined in the Special Terms or the **reference conversion rate** in force on the day on which the risk of cancellation arises
- > If the Insured has foreign currency cover : at the **reference conversion rate** in force on the date of expiry of the **claims waiting period**.

22.1.5. If the principal amount corresponding to contractually agreed partial deliveries or services is denominated in a foreign currency, it shall be converted as follows :

- > If the Insured does not have foreign currency cover : based on the lowest of the following rates : the **maximum conversion rate** defined in the Special Terms or the **reference conversion rate** in force on the day the risk of cancellation arises
- > If the Insured has foreign currency cover : in the foreign currency concerned or in euro, by converting the foreign currency into euro at the **reference conversion rate** in force on the day of expiry of the **claims waiting period**.

22.1.6. If the contract is denominated in a foreign currency, ODL may decide to compensate the **loss** caused by the risk of cancellation, either in euros or in the foreign currency by converting the loss account into the foreign currency at the **reference conversion rate** in force on the day the indemnity receipt was issued.

22.2. Risk of non-payment

22.2.1. **Compensation** of a **loss** due to the risk of non-payment corresponds to the product of the **percentage of cover** and the debit balance of the loss account.

22.2.2. The balance of the loss account is drawn up as follows :

Debited:

- > the unpaid amount of the debt as referred to in Article 5.2.1.

Credited:

- > any amount received in connection with the claim, in particular following the enforcement of collaterals or the resale of recovered, manufactured or sourced goods.

22.2.3. If the contract is denominated in a foreign currency and the Insured does not have foreign currency cover, ODL may decide to compensate at the **maximum conversion rate** defined in the Special Terms or **reference conversion rate** from the date of expiry of the **claims waiting period**.

22.2.4. If the Insured has foreign currency cover, Article 22.5 will apply.

22.2.5. In the event of unilateral termination of the contract by the **debtor** for reasons of convenience (« termination for convenience »), ODL will indemnify the amount of the claim corresponding to the **compensation** provided for in the contract, payable to the Insured, if this remains unpaid. The amount of **compensation** paid by ODL will, however, be capped at the debit balance of the loss account established in accordance with the procedures provided in the event of termination in Article 22.1

22.3. Calling of a **bank guarantee**

22.3.1. **Compensation** for a **loss** resulting from a calling of the **bank guarantee** corresponds to the product of the **percentage of cover** and the amount (excluding fees) of the **bank guarantee** debited from the Insured's bank account following the calling of the **bank guarantee**.

22.3.2. If the guarantee is denominated in a foreign currency, it will be converted as follows :

- > If the Insured does not have foreign currency cover : based on the lowest of the following rates: at the **maximum conversion rate** defined in the Special Terms or **reference conversion rate** from the date of expiry of the **claims waiting period**
- > If the Insured has foreign currency cover, ODL may decide to compensate the **loss** resulting from a calling of the **bank guarantee**
- > In the relevant currency or
- > In euros, by converting the foreign currency into euros at the **reference conversion rate** in force on the day on which the Insured's bank account is debited following the calling of that **bank guarantee**.

22.4. Detainment of and damage to the **contractor's equipment**

22.4.1. **Compensation** for a **loss** resulting from detainment of and damage to the **contractor's equipment** corresponds to the product of the **percentage of cover** and the debit balance of the loss account.

22.4.2. The balance of the loss account is drawn up as follows :

Debited:

- > The residual value of the **contractor's equipment** established on the day of its destruction, deterioration or loss of possession, i.e. its residual economic value taking into account its use and obsolescence or, if the **contractor's equipment** is rented or leased, the amount owed by the insured to the owner of the **contractor's equipment**.

The value may not, however, exceed the insured value indicated in the Special Terms, having understood that this indication does not imply any approval of the actual value on the part of ODL:

If it appears that the Insured has a cover for less than the actual value of the **contractor's equipment**, ODL will apply a proportionality rule.

In the event of a partial destruction, deterioration or loss of possession of the **contractor's equipment**, ODL will compensate the lower amount of the costs or repairing the **contractor's equipment** or its residual economic value, after application of the proportionality rule.

Credited:

- > any amount received by the Insured in connection with the **contractor's equipment**, such as in particular any **compensation** obtained from other insurers, liable third parties or public authorities.
- > The residual value of the **contractor's equipment** remaining in the Insured's possession, unless the **contractor's equipment** is rented or leased.

22.4.3. The Insured shall use its best endeavours to recover the **contractor's equipment** of which it has lost possession.

If it is recovered within 12 months of the **indemnity** paid by ODL, the Insured attempts, whether it keeps or resells this equipment, to pay ODL an amount corresponding to the residual economic value of this equipment established on the day of its recovery, up to the **percentage of indemnity**.

If it is recovered after this period, the Insured has the choice of keeping or reselling the equipment. In the first case scenario, the previous paragraph applies. In the second case, the Insured attempts to resell the recovered **contractor's equipment** under the best possible terms and to pay the resale price to ODL up to the amount of the **percentage of indemnity**.

22.5. Foreign currency cover

22.5.1. ODL may decide to compensate the **loss** resulting from a risk of non-payment :

- > In the relevant foreign currency
- > In euro, by converting the foreign currency into euro at the **reference conversion rate** in force on the day of expiry of the **claims waiting period**.

ARTICLE 23

Compensation of exceptional expenses

23.1. The Insured may request **compensation**, up to the **percentage of cover**, for the exceptional expenses they have incurred.

23.2. Exceptional expenses are those costs, incurred with prior written approval from ODL, which are outside the normal performance of the contract and which :

- > Are consecutive to the occurrence of a covered risk or the threat of such a risk; or
- > Are intended to avoid or limit a **loss** or to maximise the **recoveries** referred to in Article 28.

If the exceptional expenses also relate to amounts not insured by ODL, they will be proportionally allocated to the insured and non-insured amounts.

23.3. However, exceptional expenses do not include :

- > Costs incurred to preserve security or to protest unpaid bills of exchange
- > The insured's operating costs
- > Costs incurred by the Insured to establish their right to **compensation**, such as in particular the costs incurred by the Insured to resolve any dispute as referred to in Article 21.5.
- > Taxes and bank commission.

23.4. If the exceptional costs have been incurred in a foreign currency, ODL may decide to compensate these costs:

- > In the relevant foreign currency
- > In euro, by converting the foreign currency into euro at the **reference conversion rate** in force on the day of expiry of the **claims waiting period**.

ARTICLE 24

Compensation for indemnities to be paid by the Insured

In the event that ODL terminates the contract as mentioned in Article 9.1., ODL shall compensate, up to the **percentage of cover**, the amount of any indemnities that the Insured is ordered to pay to the **debtor** or its subcontractors as a result of the contract based on a decision of the competent judge that is enforceable in the Insured's country.

ARTICLE 25

Payment of the indemnity

25.1. The indemnity will be paid within thirty (30) calendar days from the date that ODL ruled on the insured's right to **compensation**, provided that the applicable **claims waiting period** has expired and that ODL has received immediately in return a completed and signed copy of the indemnity receipt, which sets out the amount and conditions of payment of the indemnity.

25.2. If the debt resulting from the contract becomes immediately due and payable (loss of the benefit of the term for the **debtor**) due to **insolvency**, contractual provisions, a

court decision or for any other reason, ODL may decide to compensate the insured:

- > In instalments based on the original repayment schedule of the contract
- > In a single accelerated payment up to the amount of the debt owed to the **debtor** following the **loss** of the benefit of the term, having understood that the **compensation** thus accelerated shall be capped at the principle amount, plus accrued credit interest, unpaid on the day on which the **debtor** lost the benefit of the term.

25.3. Unless otherwise agreed between the insured and ODL, if the insured debt is rescheduled or restructured in order to avoid the occurrence of a covered risk or to limit a **loss**, any **compensation** by ODL shall be paid based on the original maturities of the agreement.

25.4. ODL reserves the right to suspend the Policy if it is aware, suspects or has reasonable grounds to suspect that money laundering, an associated underlying offence, terrorist financing or a breach of international financial restrictive measures are taking place, took place or was attempted by the Insured, in particular because of their person, their development, the origin of the assets, the nature, the purpose or the terms of the concerned transaction

25.5. At no moment of time can ODL be asked to make any form of payment if, by doing so, ODL would violate its legal or regulatory obligations.

25.6. In the event of conviction of the Insured for violation of its legal and regulatory obligations, the Insured undertakes to reimburse ODL for all indemnities, all fees and costs borne by ODL, also including the extraordinary expenses paid under Article 23.2.

ARTICLE 26

Subrogation

Concurrently with the payment of any **compensation**, ODL, according to article 7(3) of the law of the 04th of December 2019, is automatically subrogated in all the rights and actions of the Insured in regards to the contract to the extent of its effective intervention.

The Insured is obliged, at the request of ODL, to provide it in a way that is enforceable against third parties with all documents, claims and titles of any kind necessary or useful for the exercise of its rights.

ARTICLE 27

Statute of limitations

All rights or actions of the insured relating to a request for **compensation** shall be barred at the earliest date of:

- > the expiry of a period of 180 calendar days from the date on which ODL notified the Insured of its refusal to pay the indemnity or
- > the expiry of a period of 3 years from the moment the covered risk occurs.

The limitation period does not run against the Insured who finds himself, due to an event of **force majeure**, unable to act within the above defined time limits.

ARTICLE 28

Recoveries

28.1. **Recoveries** shall be assigned according to the **chronological allocation** rules as set out in Article 7.

28.2. Contrary to Article 1252 of the civil code, **recoveries** are shared between ODL and the Insured, where ODL's share is determined based on the **percentage of indemnity**.

28.3. The Insured is obliged to inform ODL immediately of any **recoveries** received after **compensation** and the Insured must pay its share within thirty (30) calendar days following the receipt of the invoice drawn up

by ODL. **Recoveries** must be paid to ODL in the currency which the insured received without taking into account any losses or gains through exchange rate which would have influenced this amount and bank fees. The Insured must exclusively take on the costs relating to tax and exchange rate losses suffered by ODL due to any late payments.

28.4. If requested, the Insured must transfer the already received rights relating to non-pecuniary **recoveries** to ODL. ODL will decide on the implementation of the rights relation to non-pecuniary **recoveries**.

CHAPTER V

MISCELLANEOUS

ARTICLE 29

Confidentiality

The Policy and its amendments are confidential. They cannot be communicated to third parties by the insured without prior written consent from ODL.

However, the Insured has the right to disclose confidential information:

- a) If it is accessible to the public, provided that the publication did not result from a violation of the insured's obligation of confidentiality;
- b) Under any legislation or regulation in force;
- c) If the necessary information is strictly needed for the Policy, to their employees, administrators, agents and service providers which are also required to respect the obligation of confidentiality.

ODL and the Insured adhere throughout the contractual relationship to the GDPR and any other existing national and European legislation or regulations concerning confidentiality and the protection of personal data.

ODL's GDPR policy is available on its website : <https://odl.lu/en/privacy-policy/>

ARTICLE 30

Applicable law

Any dispute concerning or connected to the interpretation, validity or implementation of the Policy will be governed by Luxembourgish law.

carried out in the language used in the Policy.

Without prejudice to any other clause, both parties can request the Luxembourg courts for any provisional or protective measures in a summary proceeding, in accordance with article 1227-4 of the new code of civil procedure.

ARTICLE 31

Jurisdiction

31.1. Mediation

31.1.1. In the event of any dispute arising out of, relating to, or in connection with the Policy, that has been notified by one party to the other, and which both parties have not been able to resolve in good faith within 45 calendar days from the date of sending notice, the management of both parties must meet in order to attempt to resolve the disagreement. The management of both parties will then have 30 calendar days to resolve the dispute. Any unresolved dispute at the end of the 30 calendar days must be submitted to arbitration in accordance with the below Article, 31.2.

31.1.2. In the event that the dispute revolves solely around the calculation of the **compensation**, as stated in chapter 4, both parties may have an independent expert, expressly accepted in writing by both parties, to determine the calculation in accordance with these general terms. The calculation carried out by the independent expert will be final and binding. The payment and costs of the independent expert will be carried equally by both parties. If the parties cannot agree on appointing an independent expert, the dispute will be submitted to arbitration as stated in the below Article 31.2.

31.2. Arbitration

Without prejudice to the above Article 31.1, any dispute resulting from or connected to the Policy must be settled in accordance with the arbitration rules of the Arbitration Centre of the Chamber of Commerce of the Grand Duchy of Luxembourg by three arbitrators appointed according to these regulations. The arbitration will take place in Luxembourg. The procedure will be

GLOSSARY :

Acts, conditions and formalities: This include but are not limited to, advance payments, opening and confirmation of irrevocable letters of credit, receiving financing, application for licenses, permits, guarantees or authorisation and supply of plans and specifications.

Acts of force majeure: all unforeseeable, untouchable, and independent events or circumstances beyond the control of the insured or the **debtor**, making it impossible to fulfil an obligation under the contract.

Application fees: The **application fees** are collected once the application for insurance has been submitted. These fees depend on the amount of the commercial contract or financial credit. For joint insurance of both the commercial contract and financial credit, the **application fees** are charged only once, based on the higher amount of the two (commercial contract/financial credit). The **application fees** are neither deductible from the premium due nor refundable.

Bank guarantee: All guarantee or counter guarantee issued on behalf of and for the account of the insured in favour for the **debtor** as part of the performance of the contract, as stated in the Special Terms.

Certain, of a fixed amount and due claim: A certain claim is a claim whose current and incontestable existence is established. It is qualified as having a fixed amount if its amount is determined or at least is capable of a provisional estimate. To be due, the claim must already be due so that the creditor is able to demand immediate payment from the **debtor**.

Chronological allocation: any payment made by the **debtor** is prioritised with the oldest unpaid due date.

Claims waiting period: The period indicated in the Special Terms and at the end of which the risk of non-payment or detainment of or damage to the **contractor's equipment** is considered indemnifiable. Unless otherwise indicated in the Special Terms, this period is set at 3 months and takes effect from the following dates:

- > Non-payment: commencing from the day of the unpaid due date. However, the **claims waiting period** is abolished if the **loss** results from the **debtor's proven insolvency**. Moreover, if the **loss** is caused by the inability to convert or transfer the funds, and if only political events and **acts of**

force majeure are covered, the claims waiting period starts when the **debtor** has carried out all acts required of it for the conversion or transfer of these funds. Furthermore, if the **loss** for which the insured is requesting **compensation** is disputed or if the **debtor** makes use of their right to exercise any set-off, the claim will be put into force on the day the decision of the judge of the contract, as mentioned in Article 21.5.

- > Termination: from the date of the termination letter issued by the insured or the **debtor**.
- > Detainment of and damage to the **contractor's equipment**: from the day of destruction, deterioration, or loss of possession of the **contractor's equipment**.

Compensation: The payment of an indemnity by ODL to the insured under the Policy.

Contractor's equipment: The insured's equipment used for the performance of the contract, including leased or purchased equipment, as specified in the Special Terms.

Debtor: The person, entity and / or where appropriate, the guarantor, obliged to meet a requirement towards the insured as stated in the Special Terms.

Loss: All loss, that the insured endured because of a covered risk and for which the insured is eligible for **compensation** under the Policy.

Luxembourg interest: The transaction should represent an interest for the Luxembourg economy, as stated in the Special Terms and expressed as a percentage of the contract value.

Maximum conversion rate: Maximum conversion rate corresponds to the ratio of the foreign currency to the euro, as stated in the Special Terms, or if not available, the **reference conversion rate** in force at the date of the contract conclusion utilised to convert the foreign currency in which the contract is denominated into euros.

Offer of cover: The **offer of cover** is a commitment made by ODL to insure the future contract that it describes, provided that the insured has requested the issuance of a Policy within 30 calendar days of the conclusion of the contract.

Over-financing: **Over-financing** occurs when withdrawals from the insured credit do not correlate to actual provided goods or services under the underlying commercial contract and lead to an enrichment for the exporter overarching the profit, which would have been generated solely from the

implementation of the underlying commercial contract.

Percentage of cover: Implies the percentage of cover stated in the Special Terms.

Percentage of indemnity: Implies the ratio, expressed as a percentage, of the indemnity paid by ODL to the total loss amount referring to the same **compensation**.

Proven insolvency: The occurrence of an event that results in the termination of individual credit for the **debtor**, such as the commencement of insolvency, bankruptcy, judicial reorganisation, or any similar events.

Reference conversion rate: **Reference conversion rate** corresponds to the ratio of the foreign currency to the euro, from the European Central Bank or, if at default, the **reference conversion rate** most commonly used for foreign markets.

Recoveries: All amounts, indemnities, or benefits of any kind and that are received after **compensation** and related to the contract.